IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1617 OF 1992

Balkrishna Narayan Palkar .. Petitioner

versus

Vijay Amrutlal Parekh .. Respondents

...

Mr.C.G. Gavnekar for the petitioner.

Mr.G.V. Limaye for the respondent.

CORAM : D.G. KARNIK, J

DATED : 25th August 2004.

P.C:-

1. By this petition, the petitioner tenant challenges the judgement and order dated 6th March 1992 passed by the Addl. Learned District Judge, Raigad, at Alibag, allowing Civil Revision Application 1 of 1989 and fixing the standard rent of the suit premises at Rs.315/- per month.

. The facts so far as they are relevant for the purpose of determination of this petition are stated below:

2. The respondent is an owner and landlord of the property bearing house no. 361, Alibag. The petitioner is a tenant occupying the suit premises which consists of a room admeasuring about 30’ x 10’. The respondent filed an application bearing Misc. Application no.28 of 1988 for determination of the amount of standard rent. In the application, the respondent alleged that the suit premises were taken on rent by his father from the petitioner 60 to 70 years ago on a monthly rent of Rs.6.25. Subsequently, the rent was increased to Rs.7.50 per month and presently, the petitioner is charging the rent of Rs.10/- p.m. In the application, he further stated that the respondent informed him that the rent would be increased to Rs.150/- p.m. from January 1988. Hence, the petitioner filed an application for determination of the amount of standard rent. After considering of the evidence adduced by the parties, the trial Court held that the standard rent of the suit premises was Rs.6.25

p.m. The Revision Application filed by the respondent in the District Court at Raigad was allowed by a judgement and order dated 6th March 1992. That judgement is impugned in this petition.

3. The District Court has held that the petitioner had not produced on record any evidence to show that the premises were let out to his father 60 to 70 years ago on a monthly rent of Rs.6.25. Thereafter, the learned Addl. District Judge looked into the current rates of rent in the locality and held that the old PWD rate of rent of Rs.1.05 per sq.ft. per month would be the fair rent. Taking into consideration the suit premises were about 300 sq.ft, the District Court fixed the standard rent at Rs.315/- per month.

4. The learned counsel for the petitioner took me through the evidence adduced by the parties and pointed out that the material evidence which was produced on record has not even been looked at by the learned Addl. District Judge. He firstly invites my attention to the original rent receipts produced in the trial Court with a list of documents at Exhibit 13. The first is a receipt for payment

of rent dated 24th March 1965 shows that rent of Rs.6/- was charged for the month of January 1964 for the suit premises. That receipt was proved and was marked as Exhibit-42 by the trial Court. The second is also a receipt for payment of rent dated 4th March 1965 for Rs.6/- for the month of December 1963. That receipt was also proved and marked as Exhibit-43 by the trial Court. The third is the receipt for payment of rent dated 4th December 1965 for Rs.7.50 for the month of December 1964. That rent receipt was also proved and marked as Exhibit-41 by the trial Court. The earliest receipt produced by the petitioner is of 10th March 1950 for Rs.6/- being the rent for March 1950 which is at Exhibit-45. None of these rent receipts have even been referred to in the judgement of the Revisional Court. The effect of those rent receipts has not at all been considered by the Revisional Court.

5. The learned counsel for the petitioner also invites my attention to the cross examination of the respondent. In paragraph no.5 of the cross examination, the respondent landlord has stated:

> "I am now shown rent receipts dated 14.12.1965 (both) signature of my

> deceased father are appearing of them. I identify them. These two rent receipts are in the handwriting of my father. These rent receipts are showing rent of Rs.7.50 p.m.

After couple of lines, the respondent further states in the cross examination

> "I am now shown one rent receipt dated 10.3.1950 which is in the handwriting of my father. The rent receipt shows rent of rs.6/- and some paise. These contents are true"

6. Perusal of the evidence of the parties shows that rent receipts at Exhibits 41 to 45 were not only proved by the petitioner in his evidence but the rent receipts were also admitted to be true and correct by the respondent landlord in his deposition. These rent receipts clearly show that the rent of Rs.6/- per month was charged in the year 1950. There appears to be a minor discrepancy as to whether rent of Rs.6/- or Rs.6.25 was charged because in the oral statement, it is stated that rent of Rs.6.25 is charged while the rent receipts shows that the rent of Rs.6/- was charged. However, that discrepancy need not detain us. The admitted position is that the rent in the year 1950 was

either Rs.6/- or Rs.6.25 p.m. The rent receipts produced as well as the oral testimony of the responent clearly establish that rent of no more than Rs.6.25 p.m. was charged in the year 1950. If so, the District Court, in exercise of a Revisional Jurisdiction, could not have interferred in the finding of fact recorded by the trial Court that the agreed rent was Rs.6.25 p.m. At the most, the District Court should have considered what were the permitted increases on account of imposition of education cess, employment guarantee cess and the like. Instead of determining the permitted increases, the District Court considered what would be the fair rent on the basis of the present rate of rent taking into consideration the rent prevailing in the locality which was impermissible. Section 5(10) of the Bombay Rents Hotels Lodging and Houses Rates Control Act, 1947 (for short 'the Act') reads as under:

> **Sec.5(10) "standard rent in relation to any premises means -**
>
> (a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or

> (b) when the standard rent is not so fixed subject to the provisions of section 11,
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> (i) the rent at which the premises were let on the first day of September 1940, or
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> (ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or
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> (iii) where they were first let after the first day of September 1940, the rent at which they were first let, or
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> (iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1A) of section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen per cent on the investment in the land and building and all the outgoings in respect of such premises; or
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> (iv) in any of the cases specified in section 11, the rent fixed by the Court:

Assuming that there was no evidence that the suit premises were let out on or prior to 1st September 1940, there was unimpeachable evidence on record that the suit premises were not let to the petitioner's father atleast since March 1950 at the monthly rent of Rs.6.25. Under sub clause (iii) of clause (b) of section 5(10 of the Act, that rent would be the standard rent. It is not the case of

the parties that the rent charged in March 1950 was a concessional rent. The trial Court had therefore, rightly fixed the standard rent at the rate of rent at which the premises were first let out in March 1950 or earlier. For these reasons, the petition deserved to be allowed. In the circumstances, the District Court clearly erred in interfering in the judgement of the trial Court in exercise of a revisional jurisdiction.

7. There is some controversy as to the quantum of permitted increases on account of imposition of taxes and cesses like education cess, employment guarantee cess. The Courts below have not addressed themselves on the issue of permitted increases. The matter therefore, deserved to be remitted back to the trial Court only for the purpose of determination of the amount of permitted increases.

8. Accordingly, petition is allowed. The standard of the suit premises is fixed at Rs.6.25 p.m. exclusive ofpermitted increases. The matter is remanded back to the trial Court for determination of the permitted increased.

9. Parties are directed to appear before the trial Court on 11th October 2004. Record be sent to the trial Court forthwith.

Certified copy expedited.

D.G. KARNIK, J